IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S. SIVAGANANAM

W.P.No.12782 of 2017
and
W.M.P.No.13639 of 2017

M/s.Tribology India Limited,
Represented by its Executive Director,
Mr.T.Nedumaran,
TVS Complex,
Padi, Chennai - 600 050. .. Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 600 003.

2. The Zonal Officer,
Zone-7,
Greater Chennai Corporation,
Ambattur,
Chennai - 600 053.

3. The Assistant Revenue Officer,
Revenue Department,
Zone - 7,
Chennai Corporation,
Chennai - 600 053. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus to call for the records on the file of the 2nd respondent in his proceedings in Z.O.7R.D.C.No./5039/2016, dated 02.03.2017 and quash the same and consequently direct the respondents to permit the petitioner to remit the property tax paid by him before the enhancement.

For Petitioner .. Mr.N.Pragasam

For Respondents
1 to 3 .. Mr.K.Venkataramani
Additional Advocate General
Assisted by

Mr.P.V.Selvakumar
Standing Counsel

ORDER

Heard Mr.N.Pragasam, learned counsel for the petitioner, and Mr.K.Venkataramani, learned Additional Advocate General, assisted by Mr.P.V.Selvasekaran, learned standing counsel for the respondent/ Corporation.

2. The petitioner is aggrieved by the impugned order passed by the second respondent, dated 02.03.2017, stating that the appeal made by the petitioner against the enhancement of the property tax has been disposed of, by fixing the annual value of the building at Rs.20,01,689/-, half yearly tax, at Rs.2,15,185/-, with effect from second half year 2011-12. The petitioner has been advised to pay the arrears amount of Rs.19,94,155/- in pursuance of the revision of property tax. Further, it has been stated that, if the petitioner is not satisfied, they may prefer an Appeal to the Taxation Appellate Tribunal, after paying old tax plus 50% of the enhanced tax till second half year 2016-17. Along with the impugned notice, final assessment notice has been enclosed.

3. The petitioner's contention is that, the increase of property tax is arbitrary, illegal and in violation of principles of natural justice. It is submitted that the Appeal Petition filed by the petitioner has not been considered, and the earlier representation given by the petitioner has also not been considered, and the earlier representation given by the petitioner has also not been taken note of, and without reference to the age of the building, usage etc., unreasonably, the property tax has been enhanced several times than the original tax fixed by the erstwhile Ambattur municipality.

4. The respondents have filed a counter affidavit, justifying the retrospective revision and fixation of the annual value of the building.

5. After hearing the learned counsel appearing for the parties, this Court directed production of the original file, pertaining to the property tax Assessment of the petitioner's

property. The photographs, which are annexed in the original file indicate that the property is an old construction and fully water inundated. Be that as it may, this Court has to see, whether the respondents have followed proper procedure, while considering the Appeal Petition filed by the petitioner, and whether the subsequent Representation filed by the petitioner was considered by the Commissioner, Corporation of Chennai.

6. Notice in the Form No.7 was issued by the respondent/Corporation, dated 21.04.2015, fixing the annual value of the building at Rs.22,80,994/-, and half yearly tax as Rs.2,45,206/- with effect from II half year 2011-12. The notice in Form No.7 states that, within 15 days from the date of receipt of the same, Appeal can be preferred to the Commissioner, Corporation of Chennai. The files produced before this Court disclose that the Appeal Petition was filed by the petitioner on 20.08.2016, though not within 15 days' time limit. Nevertheless, same has been received by the office of the respondent on 12.09.2016, as could be seen from the original file.

7. The learned Additional Advocate General for the respondent/Corporation would submit that, the powers of the Commissioner has not been delegated to the Zonal Officer, who is entitled to dispose of the Appeal.

8. On a Perusal of the Original FileS shows that, at page 27 is the recording of the objections of the owner/ authorised persons, at the time of personal hearing before the concerned Officer on 25.02.2017 at 11.00am. The petitioner's representative attended the enquiry, and stated that, as per the Government norms, maximum increase in tax can be only 100% - and there is no dispute with regard to the measurement of the area, and they opposed the revision in tax, considering the age of the building, and they will produce necessary documents for the construction put up in the said property. In the same page, the Officer has made an endorsement, indicating that, i) Measurement no dispute. ii) Tax increase as per erstwhile Ambattur Municipality is in order, and iii) Age rebate 10% may be considered as per the document produced.

9. Thus, the above noting has been made by the Assistant Revenue Officer, Zone VII, and in the bottom of the page, it has been initialed by the Zonal Officer. Therefore, on perusal of the original file, it is seen that the Zonal Officer has not passed a speaking order after the enquiry, which was conducted on 25.02.2017, in which, the authorized representation of the petitioner, Mr.G.S.Chandrasekaran participated. It may be true that notice in Form No.10 has been issued issued to the

petitioner. The petitioner is at loss to know, as to what are the grounds, on which, Appeal was rejected, and as to why, the grounds raised by them has not been considered.

10. Thus, it is clear that, there has been violation of principles of natural justice, and the petitioner does not know as to why the grounds raised by them in the Appeal were not considered. Unless, and until, a speaking orders is passed, the petitioner cannot file an Appeal, if aggrieved by such orders. Therefore, the impugned proceedings cannot be enforced against the petitioner as of now.

11. In the light of the above, the Writ petition is allowed, the impugned proceedings, dated 02.03.2017 are set aside, and the second respondent shall consider the petitioner's objections, dated 20.08.2016, and received on 12.09.2016, and taking note of the age of the building as well as the photographs, and after affording an opportunity of personal hearing to the authorized representative of the petitioner, pass a speaking order on merits and in accordance with law.

12. The above direction shall be complied with by the second respondent within a period of three weeks from the date of receipt of a copy of this order.

13. At the time, when the Writ Petition was entertained, order of interim stay has been granted, on condition that the petitioner shall pay a sum of Rs.2,00,000/-. This conditional order has been complied with by the petitioner, and therefore, the respondents are restrained from taking any coercive action against the petitioner, for recovery of the enhanced tax, as mentioned in Notice 10, and the payment made by the petitioner shall abide by the fresh orders to be passed second respondent, in terms of the above directions.

14. In the result, the Writ Petition is allowed, as indicated above. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

at/sd

To

1. The Commissioner,
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   Rippon Building,
   Chennai - 600 003.

2. The Zonal Officer,
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   Greater Chennai Corporation,
   Ambattur,
   Chennai - 600 053.

3. The Assistant Revenue Officer,
   Revenue Department,
   Zone - 7, Chennai Corporation,
   Chennai - 600 053.

+1cc to M/s.P.V.Selvakumar, Advocate, S.R.No.49205
+1cc to M/s.N.Pragasam, Advocate, S.R.No.49183

W.P.No.12782 of 2017

AR(CS V)
CU(11/08/2017)